AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: PELZ et al.	Examiner: Jeffrey R. West
For: SERVICE ELEMENT IN DISTRIBUTED SYSTEMS	Art Unit: 8032
Filed: March 21, 2002	
Serial No.: 09/913,992	

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Michelle Carniaux (Reg. No. 36,098)

APPEAL BRIEF TRANSMITTAL

SIR:

Transmitted herewith for filing in the above-identified patent application, please find an Appeal Brief pursuant to 37 C.F.R. Part 41.37.

Please charge the Appeal Brief fee of $500.00, and any other fees that may be required in connection with this communication to the deposit account of **Kenyon & Kenyon**, deposit account number **11-0600**.

Respectfully submitted,

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Dated: 10 Feb 2005

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APPEAL BRIEF PURSUANT TO 37 C.F.R. PART 41.37

SIR:

On August 13, 2004, Appellants submitted a Notice of Appeal from the final rejection of claims 11-23 contained in the Final Office Action issued by the U.S. Patent and Trademark Office (the "PTO") on May 3, 2004 in the above-identified patent application. Appellants also filed on Appeal Brief on October 12, 2004, and received an Office Communication dated January 10, 2005 which indicates that the Appeal Brief filed was defective. The present Appeal Brief addresses the Office Communication dated January 10, 2005.

This brief is submitted in support of the appeal of the final rejection of claims 11-23. For at least the reasons set forth below, the final rejection of claims 11-23 should be reversed.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH, Postfach 30 02 20, 70442 Stuttgart, Federal Republic of Germany. Bosch is the assignee of the entire right, title and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no interferences or other appeals related to the present application.

3. STATUS OF CLAIMS

Claims 11-14 and 17-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,185,491 (the Gray patent) in view of U.S. Patent No. 6,246,935 (the Buckley patent).

Claims 15, 16, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of U.S. Patent No. 6,330,499 to Chou et al. (the Chou patent).

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of U.S. Patent No. 4,866,713 to Worger et al. (the Worger patent).

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of U.S. Patent No. 4,843,557 to Ina et al. (the Ina patent).

Appellants appeal from the final rejection of claims 11-23. A copy of all of the pending claims is attached hereto in the Appendix.

4. STATUS OF AMENDMENTS

An Amendment After Final Office Action was filed in the PTO on June 28, 2004. In an Advisory Action dated July 22, 2004, the Examiner indicated that the proposed amendments to the drawings in the Amendment After Final Office Action have been approved.

5. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 11

Claim 11 recites to a service element, e.g., element 2 of Fig. 1, that belongs to a distributed system (e.g., Fig. 1) as a component. See, e.g., Substitute Specification, page 4, lines 4-5. The distributed system further includes other components (e.g., Fig. 1, elements 3-7) that are independent of one another and interconnected by a bus (e.g., Fig. 1, element 1). See, e.g., id. at page 4, lines 5-7. The service element (Fig. 1, element 2) includes an arrangement for configuring the other components; an arrangement for

upgrading the other components; an arrangement for maintaining the other components; and an arrangement for performing an emergency function. See, e.g., Fig. 4; Substitute Specification, page 1, lines 22-25.

As described in the Substitute Specification, the service element is either provided with its own hardware, i.e., its own processor, or running on an already existing processor, in parallel with other software. See, e.g., Substitute Specification, page 3, lines 28-32.

Independent Claim 19

Claim 19 recites a distributed system. See, e.g., Fig. 1. The distributed system includes a bus (e.g., Fig. 1, element 1); and components connected by the bus and that are independent of each other (e.g., Fig. 1, elements 2-7), the components include a service element (e.g., Fig. 1, element 2) that includes an arrangement for configuring other components, an arrangement for upgrading the other components, an arrangement for maintaining the other components, and an arrangement for performing an emergency function. See, e.g., Fig. 4; Substitute Specification, lines 22-25.

As described in the Substitute Specification, the service element is either provided with its own hardware, i.e., its own processor, or running on an already existing processor, in parallel with other software. See, e.g., Substitute Specification, page 3, lines 28-32. The bus 1 (Fig. 1) may be realized by, e.g., an electrical wiring system, an optical system, or may be, e.g., radio-based. See, e.g., Substitute Specification, page 4, lines 9-13. In one embodiment, the other components may include, e.g., a memory device 3, a communications element 4, a navigation device 5, a DAB (digital audio broadcasting) receiver 6, and a display 7. See, e.g., Fig. 1, Substitute Specification page 4, lines 15-17. In another embodiment, the other components may include, e.g., sensors 9, actuating mechanisms 10, and engine control unit 11, an airbag 12, a driver-recognition system having locking system 13, a display 22 and a communication element 23. See, e.g., Fig. 2; Substitute Specification, lines 16-21. In yet another embodiments, the other components may include a heating unit 17, and air conditioning unit 18, a lighting system 19, a smoke alarm 20, a security system 21, a display 24, and a communications element 25. See, e.g., Fig. 3, lines 4-6.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 11-14 and 17-20 which stand rejected under 35 U.S.C. § 103 are patentable over the Gray patent in view of the Buckley patent.

B. Whether claims 15, 16, and 21 which stand rejected under 35 U.S.C. § 103 are patentable over the Gray patent in view of the Buckley patent and further in view of the Chou patent.

C. Whether claim 22 which stands rejected under 35 U.S.C. § 103 is patentable over the Gray patent in view of the Buckley patent and further in view of the Worger patent.

D. Whether claim 23 which stands rejected under 35 U.S.C. § 103 is patentable over the Gray patent in view of the Buckley patent and further in view of the Ina patent.

7. ARGUMENT

A. Ground A

Claims 11-14 and 17- 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent. It is respectfully submitted that the Gray patent and the Buckley patent, whether taken alone or combined, do not render obvious any of claims 11 to 14 and 17 to 20, for at least the following reasons.

As regards the obviousness rejections, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim feature and it must also provide a motivation or suggestion for combining the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). Thus, the "problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem", Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998). The prior art simply does not address the problems met by the subject matter of any of the rejected claims.

Claims 11 and 19 provide for a service element and a distributed system including other components that are independent of one another and interconnected by a bus, the service element includes: an arrangement for configuring the other components, *an arrangement for upgrading the other components, an arrangement for maintaining the other components*, and *an arrangement for performing an emergency function.*

In accordance with the example embodiment described in the present application, "the service element of the present invention and the distributed system of the present invention have the advantage that the service element is able to carry out configurations, upgrades, maintenance, and, if necessary, emergency functions on the components of the distributed system." (See Specification, page 1, lines 22-25).

In contrast, the Gray patent purportedly concerns a vehicle control computer system and device interfaces. A vehicle control center, with a processor and memory, provides user access to devices operating within the vehicle. The manufacturer of the devices provides a device interfaces stored within the device. When a device is installed in the vehicle, the processor or other control element of the vehicle control center becomes aware of the installation and requests or otherwise receives the stored device interface from the device. The vehicle control center uses the device interface as received or replaces it with a different interface already stored in memory. (Abstract, lines 1-12). Furthermore, the Gray patent states the vehicle control center may be used to control other components including "radar, air bag activation and status, video cameras, emergency rescue, alarms, anti-theft system, odometers, gyroscope, route guidance, access control, location transponder, video games, an internet connection, a digital multimedia broadcasting receiver, telephone receivers, digital video decoders and recorders, a digital audio broadcasting receiver, voice recognition systems, a cellular telephone handset either directly connected or linked via infrared, a digital cell phone module and a gateway to other buses." (Col. 3, lines 52-65).

Accordingly, the Gray patent does not disclose or even suggest the features in which *an arrangement maintains other components* and *an arrangement performs an emergency function* in a distributed system, as provided for in the context of claims 11 and 19. The Gray patent merely indicates that when a device is installed in a vehicle, a vehicle control center becomes aware of the installation and requests or otherwise receives a stored device interface from the device such that the vehicle control center uses the device interface as received or replaces it with a different interface already stored in memory. The Gray patent only provides for configuration and upgrading of devices via a vehicle control center that may be used to control various devices of the vehicle (e.g., air bag activation, etc.). The Gray patent does not describe that the vehicle control center, itself, performs an emergency function. Nothing in the Gray patent discloses or even suggests the claim features of an arrangement for maintaining other components in a distributed system and

an arrangement for performing an emergency function, as provided for in the context of claims 11 and 19.

Claims 11 and 19 further recite *an arrangement for upgrading the other components* (the other components being a number of independent components of a distributed system). In connection with this feature, the Examiner indicates that the Gray patent does not disclose this feature, and instead relies on the Buckley patent. (Final Office Action, page 4-5).

The Buckley patent, however, does not describe a component that upgrades other independent components in a distributed system. In the sections of the Buckley patent relied on by the Examiner (col. 10, lines 27-33), the Buckley patent apparently describes upgrading firmware of the CIPN microcomputer via an external device (via an infrared link). This section does not describe a component of a distributed network having the ability to upgrade a number of independent components of the distributed system, as required by claims 11 and 19.

For the foregoing reasons, the Gray patent and the Buckley patent, whether taken alone or combined, do not render obvious claims 11 and 19.

Claims 12-14, 17, and 18 depend from claim 11, and claim 20 depends from claim 19. According, the arguments presented above in connection with claims 11 and 19 apply equally to claims 12-14, 17, 18 and 20.

It is therefore respectfully submitted that the rejections as to claims 11-14 and 17-20 should be reversed.

B. Ground B

Claims 15, 16, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of the Chou patent. Claims 15, 16, and 21 depend from allowable claim 11. It is therefore respectfully requested that the obviousness rejections be reversed since claims 15, 16, and 21 are allowable for essentially the same reasons as claim 11, and since the Chou patent does not cure the critical deficiencies of the Gray patent and the Buckley patent, which were explained above. This is because any review of the Chou patent makes clear that it simply does not in any way disclose or suggest the claim 11 features discussed above. Accordingly, claims 15, 16, and 21 are allowable. It is therefore respectfully requested that the rejections as to claims 15, 16, and 21 be reversed.

C. Ground C

Claim 22 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of the Worger patent. Claim 22 depends from allowable claim 11. It is therefore respectfully requested that the rejection be reversed since claim 22 is allowable for essentially the same reasons as claim 11, and since the Worger patent does not cure the critical deficiencies of the Gray patent and the Buckley patent, which were explained above. This is because any review of the Worger patent makes clear that it simply does not in any way disclose or suggest the claim 11 features discussed above. Accordingly, claim 22 is allowable. It is therefore respectfully requested that the rejection as to claim 22 be reversed.

D. Ground D

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over the Gray patent in view of the Buckley patent and further in view of the Ina patent. Claim 23 depends from allowable claim 11. It is therefore respectfully requested that the rejection be reversed since claim 23 is allowable for essentially the same reasons as claim 11, and since the Ina patent does not cure the critical deficiencies of the Gray patent and the Buckley patent, which were explained above. This is because any review of the Ina patent makes clear that it simply does not in any way disclose or suggest the claim 11 features discussed above. Accordingly, claim 23 is allowable. It is therefore respectfully requested that the rejection as to claim 23 be reversed.

8. CONCLUSION

For at least the reasons indicated above, Appellants respectfully submit that the art of record does not teach or suggest Appellants' invention as recited in the claims of the above-identified application. Accordingly, it is respectfully submitted that the invention recited in the claims of the present application is new, non-obvious and useful. Reversal of the Examiner's rejections of the claims is therefore respectfully requested.

Respectfully submitted, (Reg. No. 36098)

Dated: 10 Feb 2005

By: _____
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CLAIMS APPENDIX

11. A service element that belongs to a distributed system as a component, the distributed system further including other components that are independent of one another and interconnected by a bus, comprising:

an arrangement for configuring the other components;

an arrangement for upgrading the other components;

an arrangement for maintaining the other components; and

an arrangement for performing an emergency function.

12. The service element according to claim 11, further comprising one of:

an arrangement for detecting a new component and for integrating the new component into the distributed system; and

an arrangement for operating a display device to represent information about a configuration.

13. The service element according to claim 12, further comprising:

an arrangement for performing an error diagnosis of software running on the other ones of the plurality of components; and

an arrangement for, in the case of an error, correcting the software within a framework of maintenance.

14. The service element according to claim 13, further comprising:

an arrangement including a communication element for loading new software for the plurality of components.

15. The service element according to claim 14, further comprising:

an arrangement for allowing a remote diagnosis of the plurality of components of the distributed system.

16. The service element according to claim 15, further comprising:

an arrangement including a communications element for, in the case of a serious functional error, contacting a service provider.

17. The service element according to claim 11, further comprising:

an arrangement for operating a display to transfer information about the distributed system to a user of the distributed system.

18. The service element according to claim 11, further comprising:

an arrangement for checking newly loaded software in accordance with a predetermined value.

19. A distributed system, comprising:

a bus; and

components connected by the bus and that are independent of each other, the components include a service element that includes:

an arrangement for configuring the other components,

an arrangement for upgrading the other components,

an arrangement for maintaining the other components, and

an arrangement for performing an emergency function.

20. The distributed system according to claim 19, wherein:

at least one of the plurality of components includes a communication element.

21. The service element according to claim 14, wherein the communications element includes a transceiver station communicating over a radio channel.

22. The service element according to claim 13, wherein the error diagnosis is performed at a predefined time interval.

23. The service element according to claim 11, wherein the bus includes one of an electrical wiring system, an optical wiring system, and a radio based system.